

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

DAVID LEE KLEENSANG, and
BERNITA MARGARET
KLEENSANG,

Plaintiffs,

v.

F. A. GOSSETT, et al.,

Defendants.

8:12CV179

**MEMORANDUM
AND ORDER**

This matter is before the court on its own motion. On May 24, 2012, the court entered a Memorandum and Order requiring Plaintiff to either pay the \$350.00 filing fee or submit a motion for leave to proceed in forma pauperis. (Filing No. [4](#).) In response, Plaintiff David Lee Kleensang filed an affidavit in which he states that the Complaint he filed in this matter is a “Criminal Complaint,” and not a “Civil Complaint,” which excuses him from the civil filing fee requirement. (Filing No. [5](#).) Indeed, the court has carefully reviewed Plaintiffs’ Complaint, and it appears Plaintiffs’ sole purpose in filing it is to persuade the court to assert criminal charges against Defendants on Plaintiffs’ behalf. (Filing No. [1](#).) However, a private plaintiff cannot force a criminal prosecution because the “authority to initiate a criminal complaint rests exclusively with state and federal prosecutors.” See [*Mercer v. Lexington Fayette Urban Cnty. Gov’t*, No. 94-6645, 1995 WL 222178, at *1 \(6th Cir. Apr. 13, 1995\) \(unpublished order\)](#); see also [*Parkhurst v. Tabor*, 569 F.3d 861, 867 \(8th Cir. 2009\)](#) (quoting [*United States v. Batchelder*, 442 U.S. 114, 124 \(1979\)](#) (“Whether to prosecute and what charge to file or bring before a grand jury are decisions that generally rest in the prosecutor’s discretion.”))).

The court does not have the authority to force a criminal prosecution against Defendants, and Plaintiffs’ request to initiate criminal charges against Defendants

does not set forth a federal claim. In addition, the court warned Plaintiffs that failure to comply with the court's May 24, 2012, Memorandum and Order would result in dismissal of this matter without further notice. In light of the nature of Plaintiffs' Complaint, it would be futile for the court to provide Plaintiffs an additional opportunity pay the \$350.00 filing fee or submit a motion for leave to proceed in forma pauperis.

IT IS THEREFORE ORDERED that:

1. This matter is dismissed without prejudice for failure to pay the court's filing fee and for failure to comply with a court order.
2. A separate judgment will be entered in accordance with this Memorandum and Order.

DATED this 3rd day of July, 2012.

BY THE COURT:

s/ John M. Gerrard
United States District Judge

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